

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

JAIME ESPINOSA,

*Plaintiff,*

v.

UNITED STATES OF AMERICA,

*Defendant.*

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No. SA-13-CR-363-XR

**ORDER**

On this date, the Court considered Plaintiff's motion to vacate his conviction. Doc. No. 16. On August 16, 2013, this Court revoked Plaintiff's supervised release and imposed a term of nine months incarceration to be followed by ten years of supervised release. Doc. No. 14. On January 17, 2014, Plaintiff filed a motion to vacate his sentence pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Doc. No. 16.

The Federal Rules of Civil Procedure govern all civil actions filed in this court. *See* FED. R.CIV. P.1. They do not apply to criminal cases. Thus, it is established that a prisoner cannot obtain post-conviction relief under Rule 60. *United States v. O'Keefe*, 169 F.3d 281, 289 (5th Cir. 1999). Since Plaintiff seeks to challenge the lawfulness of his federal custody, the proper procedural mechanism is a petition for a writ of habeas corpus under 28 U.S.C. § 2255.

This Court is under an obligation to construe a pro se complaint liberally. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). There are, however, important consequences that would

follow if the Court construed this motion as a petition for habeas corpus under § 2255. In particular, the statute severely curtails a prisoner's ability to bring multiple or successive § 2255 petitions. 28 U.S.C. § 2255(h). Accordingly, the Court declines to construe this motion as a § 2255 petition. *See, Castro v. United States*, 540 U.S. 375, 382-383 (2003) (noting that district court must first inform pro se Plaintiff if it is going to construe any motion as § 2255 petition).

Should Plaintiff here wish to challenge his federal sentence, he may do so under 28 U.S.C. § 2255. Accordingly, Plaintiff's Rule 60 motion is DENIED. Doc. No. 16.

SIGNED this 30th day of January, 2014.

A handwritten signature in black ink, appearing to read 'Xavier Rodriguez', with a stylized flourish at the end.

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XAVIER RODRIGUEZ  
UNITED STATES DISTRICT JUDGE